IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.99 OF 2007.
IN
CRIMINAL WRIT PETITION NO.2017 OF 2006.

Mrs. Charu K. Mehta and Ors. ..Petitioners
V/s
The State of Maharashtra & Ors. ..Respondents.

Shri Nitin Pradhan i/b Ms. S.D. Khot for the petitioners

Shri Ravi Kadam, Advocate General with Shri S.R. Borulkar, PP with Mrs. A.S. Pai, APP for the respondents.

Shri Amit Desai i/b Shreeji & Lal for intervenor. Shri Vinod Bobade, Sr. Counsel i/b M/s Nankani & Associates for intervenor.

CORAM : R.M.S.KHANDEPARKAR AND
SMT. V.K. TAHILRAMANI, JJ.

DATE : 31ST JULY , 2007.

P.C.

. Heard at length S/Shri Pradhan, learned Counsel for the petitioners, Ravi Kadam, learned Advocate General for the respondents and Desai, learned Counsel for the intervenor at length.

2. By the present application, the petitioners seek direction to the respondents to furnish copy of the inquiry report prepared by the respondents, consequent to the order passed by this Court on 22nd September,

2006 in Writ Petition No. 2017/2006. The order dated 22nd September, 2006 reads thus:-

> "The petitioner has made certain allegations of threats received by her which have been typed and transcribed. The DCP, Detention Cell, shall make a preliminary enquiry with regard to the complaint and transcript and submit a report"

3. Thereafter, when the matter came up for hearing before this Court on 12/1/2007 it appears that the report of preliminary inquiry prepared by the respondents was tendered in the Court by the Advocate General and it was ordered to be kept in a sealed cover. Thereafter the present application came to be filed by the petitioners seeking direction to the respondents to furnish a copy of the said report, as well as for disclosure of source of material for preparation of the said report to the petitioners. The same has been orally objected to on behalf of the respondents.

4. Referring to Sections 3, 74, 123, 124, and 162 of the Evidence Act, 1872 and placing reliance in the decisions in **R.K. Jain V. Union of India** reported in (1993) 4 SCC 119, **People's Union for Civil Liberties and another V. Union of India and others**, reported in

(2004) 2 SCC 476, **Mahesh Chand V. B. Janardhan Reddy and Another**, reported in (2003) 1 SCC 734, **J.K.International V State of Govt. of NCT of Delhi) and others**, reported in (2001) 3 SCC 462, **State of U.P. V. Raj Narain and others**, reported in (1975) 4 SCC 428 and **Bhagwant Singh V. Commissioner of Police and another**, reported in (1985) 2 SCC 537, the learned Advocate appearing for the petitioners submitted that the respondents' office has not filed any affidavit objecting to disclosure of the report to the petitioners and considering the report to be a document, any part of the material which comes on record in the form of evidence, all the parties to the proceedings are entitled to have access to the same and hence, the petitioners are to be provided with a copy of the report sought to be produced pursuant to the order passed by this Court. It is also sought to be contended that unless the report is made available, the petitioners may not be able to canvas their case effectively in the petition for admission thereof. For the purpose of consideration of the grievance of the petitioners in the petition by this Court in writ jurisdiction, and as there is no public interest involved in the matter which could justify non disclosure of the report to the

petitioners, no presumption in that regard can be drawn in the absence of the affidavit filed by the respondents in that regard.

5. Plain reading of the order dated 22nd September, 2006 passed by this Court in a writ petition directing DCP, Detention Cell, to conduct preliminary enquiry and to submit report in the facts and circumstances of the matter discloses that the said inquiry was ordered bearing in mind the matter relates to the grievance of the petitioners that inspite of the petitioners claiming to have disclosed cognizable offence in their complaint, the police authorities have neglected to look into the matter and to investigate the same It is well settled law that even when any complainant approaches the police authorities alleging the commission of the offence of cognizable nature by some one else, the police are not forbidden from conducting preliminary inquiry before registering the FIR to investigate into the matter. It is, obviously, bearing in mind the well settled practice that before considering the matter for the purpose of admission, the court may in appropriate case issue direction to the concerned authorities to hold a preliminary inquiry.

6. It is pertinent to note that though the matter was filed in the year 2006, the same is yet to be admitted and rule is yet to be issued in the matter. The learned Counsel for the petitioners has vehemently submitted that in the absence of report being made available for the perusal of the petitioners, it may not be possible for the petitioners to effectively place before this Court the contention and evidence for satisfaction of the Court to issue a writ in the matter and to give further directions to the respondents.

7. In the background of the above noted facts, while considering the present application it is to be borne in mind that this Court is yet to consider whether the matter requires interference of this Court in a writ jurisdiction or not. It is yet to be ascertained as to whether any directions are to be issued to the respondents in relation to the grievance made by the petitioners about failure on the part of the respondents to look into the matter and to investigate pursuant to the allegations made by the petitioners regarding commission of cognizable offence. In such circumstances, the question of considering the report to

be forming part of any evidence as such does not arise at all. The occasion for considering any material to be a part of forming evidence would arise only when such a material is placed before the Court for application of mind by the Court in relation to the matter in dispute between the parties before the Court, and when the Court is invited to adjudicate upon an issue for its decision. Here, the Court is yet to consider the matter whether it is fit to be admitted or not. The matter relates to the complaint alleging criminal offence, and the petitioners having made grievance that the fact alleged discloses commission of cognizable offence, it is only for the purpose of ascertaining prima facie by the respondents authorities that the said direction was issued to hold preliminary inquiry. Certainly, if the report is to be made the basis for any decision of the matter, the question of allowing the petitioners to look into the report would arise. It is too premature for this Court to consider and issue direction in the matter to the respondents to disclose the said report to the petitioners, at this stage. It is only upon the petitioners making out a case on the basis of the materials placed by the petitioners before this Court that the same discloses cognizable offence and yet the

police authorities have arbitrarily failed to to perform their duties and have neglected to look into the complaint filed by the petitioners, that the question of entertaining the petition would arise. Obviously, this is to be decided by applying well settled rules and guide-lines issued by the Apex Court. Allowing the petitioners to look into the preliminary report and on the basis of such preliminary report allow to argue for admission of the petition would virtually amount to assist the petitioners to collect the evidence to justify the interference of this Court. Undoubtedly, this may not forbid this Court to look into the report to satisfy itself, whether there is really a case, which requires consideration on merits. However, that by itself will not entitle the petitioners to insist for disclosure of the said report even before considering the the matter for admission purpose.

8. All the decisions which are sought to be relied upon on behalf of the petitioners are in relation to either investigation carried out or the materials which are forming part of the records of the Court, or in relation to the documents which are admissible in evidence in any proceedings. Preliminary inquiry report

prepared pursuant to the order dated 22nd September, 2006 cannot be classified as any such document as referred to in those decisions sought to be relied upon by the learned Counsel for the petitioners, and therefore, none of these decisions can be of any help to the petitioners to insist for disclosure of the preliminary report to the petitioners in the matter in hand.

9. Being so, while rejecting the application under consideration, the issue as to whether the petitioners would be entitled to look into the report at an appropriate stage or not is kept open. The Writ Petition No.2017/2006 along with other connected matters are directed to be placed for hearing on admission on 9th August, 2007.

(R.M.S. KHANDEPARKAR, J.)

(SMT. V.K.TAHILRAMANI,J.)